

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

TOWN OF BURRILLVILLE

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:
:

v.

C.A. No. T14-0039
14416500204

NFAMARA JADAMA

DECISION

PER CURIAM: Before this Panel on August 20, 2014—Judge Parker (Chair, presiding), Magistrate Noonan, and Magistrate DiSandro III, sitting—is Nfamara Jadama’s (Appellant) appeal from a decision of Magistrate Abbate, sustaining the charged violation of G.L. 1956 § 31-13-4, “Obedience to Traffic Control Devices.” Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

Facts and Travel

On March 24, 2014 Sergeant Eddy (Sergeant) of the Burrillville Police Department charged Appellant with the aforementioned violation of the motor vehicle code. The Appellant contested the charge, and the matter proceeded to trial on June 5, 2014.

At trial, the Sergeant testified that he was on a fixed traffic post on Broncos Highway in the area of Central Street. (Tr. at 3.) While on patrol, the Sergeant was monitoring the traffic light on Central Street. (Tr. at 4.) Sergeant Eddy testified that at approximately, 1:43a.m., he observed Appellant’s vehicle pass through a red light without coming to a complete stop, and the vehicle turned left onto Broncos Highway. Id. In addition, the Sergeant noted that he observed the traffic light cycle through red, yellow, and green lights while on his fixed traffic post and the light was working properly. Id.

Thereafter, Appellant's counsel inquired if there were any other vehicles on the road at that time, and the Sergeant responded in the negative. (Tr. at 5-6.) Next, Appellant's counsel asked how many vehicles had passed through the light at the time that the Sergeant was at this fixed traffic post, and the Sergeant answered about five or six. (Tr. at 6.) The Appellant's counsel further inquired about how far away the Sergeant was from the traffic light, to which the Sergeant responded approximately a "football field" from the traffic light. (Tr. at 6-7.) Appellant's counsel then asked if he could see the stop line at the traffic light from his traffic post. (Tr. at 9.) The Sergeant responded that he could not see the stop line. (Tr. at 10.)

Subsequently, Appellant testified that the traffic signal was green at the time he crossed the stop line. (Tr. at 14-15.) The Appellant reiterated that when he entered the intersection, the traffic light was green. (Tr. at 15.) Thereafter, Appellant stated that he made a left hand turn before being stopped by the Sergeant. Id.

After the conclusion of Appellant's testimony, the trial magistrate issued his decision sustaining the charged violation. (Tr. at 18-23.) In making his decision, the trial magistrate found the Sergeant's testimony to be credible in totality and adopted the Sergeant's testimony as his findings of fact. (Tr. at 19.) Before imposing Appellant's sentence, the trial magistrate reviewed Appellant's driving record and made the following findings: Appellant had a speeding violation on October 29, 2013; a speeding violation on November 17, 2013; a speeding violation on March 16, 2013; and another speeding violation on February 18, 2013. (Tr. at 21.)

Thereafter, the trial magistrate stated that

“the Court does find that [Appellant] is subject to enhanced penalties under the Colin Foote Statute. The Court does find, based on his driving record, that he does pose a potential hazard if he continues to operate a motor vehicle in the State of Rhode Island. Although, this specific incident may not have posed a hazard to himself or other motorists at that time, his record clearly

indicates that he has flagrant disregard for the traffic laws of the State of Rhode Island. Based on that the Court will impose sanctions under the Colin Foote Statute, 60 hours community service, driver retraining for 60 hours. The Court will suspend his license for six months.” (Tr. 21-22.)

Aggrieved by the trial magistrate’s decision to sustain the charge, Appellant timely filed the instant appeal.

Standard of Review

Pursuant to G.L. 1956 § 8-18-9, any person may appeal an adverse decision from a municipal court and seek review from this Panel pursuant to the procedures set forth in § 31-41.1-8. Section 31-41.1-8 states that the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” [Link](#)

v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

Analysis

On appeal, Appellant asserts that the trial magistrate’s decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In particular, Appellant avers that the trial magistrate erred by crediting the Officer’s testimony over his own. In addition, Appellant argues that the trial magistrate’s decision to impose increased sanctions was affected by error of law and in violation of statutory provisions. Specifically, Appellant contends that the trial magistrate failed to make specific findings of fact that the Appellant posed a substantial threat to safety as required by the Colin Foote Act.

I

Credibility

The Appellant maintains that it was an error of law for the trial magistrate to credit the Officer’s testimony over his own testimony. Specifically, Appellant asserts that the trial magistrate erred by crediting the Officer’s testimony, despite several inconsistencies in his testimony.

In Link, our Supreme Court made clear that this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing [magistrate] concerning the weight of the evidence on questions of fact.” Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). As the members of this Panel did not have an opportunity to view the live trial testimony of the Officer or Appellant, it would be impermissible to second-guess the trial magistrate’s “impressions as he . . . observe[d] [the Officer and Appellant] [,] listened to [their] testimony [and] . . . determine[ed] . . . what to accept and what to disregard[,] . . . what . . . [to] believe[] and disbelieve[.]” Environmental Scientific Corp., 621 A.2d at 206.

After listening to the testimony of Appellant and the Officer, the trial magistrate determined that the Officer’s testimony was not only credible, but the testimony was also sufficient to sustain the charged violations. See Tr. at 18-3. “[The appellate court] [is] not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial magistrate concerning the weight of the evidence on questions of fact.” Environmental Scientific Corp., 621 A.2d at 208 (quoting Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Confining our review of the record to its proper scope, this Panel is satisfied that the trial magistrate’s decision to sustain the charged violation is supported by legally competent evidence. Environmental Scientific Corp., 621 A.2d at 209 (the [appellate court] should give great deference to the [trial magistrate’s] findings and conclusions unless clearly wrong).

II

License Suspension

Appellant argues that the trial magistrate's decision to impose increased sanctions was affected by error of law and in violation of statutory provisions. Specifically, Appellant contends that the trial magistrate failed to make specific findings of fact that the Appellant posed a substantial threat to safety as required by the Colin Foote Act.

It is a well-established principle of statutory interpretation that when the language of a statute is clear and unambiguous, the Court must enforce the statute as written by giving the words of the statute their plain and ordinary meaning. DeMarco v. Travelers Insurance Co., 26 A.3d 585, 616 (R.I. 2011); Sidell v. Sidell, 18 A.3d 499, 504 (R.I. 2011). The task in construing any statute is to effectuate and establish the intent of the legislature. Pierce v. Pierce, 770 A.2d 867, 871 (R.I. 2001). When charged with the duty of statutory construction, one must read language so as to effectuate legislative intent behind its enactment; if language is clear on its face, then the plain meaning of statute must be given effect. Gilbane Co. v. Poulas, 576 A.2d 1195 (R.I. 1990); see also Mullooney v. Masopust, 943 A.2d 1029, 1034 (R.I. 2008). Therefore, if a statutory provision is unambiguous, there is no room for statutory construction and the court must apply the statute as written. International Broth. of Police Officers v. City of East Providence, 989 A.2d 106 (R.I. 2010).

The Colin Foote Act states that “[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period” is subject to increased penalties.¹ § 31-27-24. The Colin Foote Act goes on to state that “[p]rior to the suspension or revocation of a person’s license to operate within the state, the court shall make specific findings of fact and determine if the person’s continued operation of a motor vehicle would pose a substantial traffic safety hazard.” Id. The use of the word “shall” connotes that before imposing

¹ Those penalties are (1) a fine up to one thousand dollars (\$1,000); (2) a mandatory sixty hours of driver retraining; (3) a mandatory sixty hours of public community service; (4) and the operator’s driver’s license may be suspended up to one year or revoked for a period of up to two years. See § 31-27-24.

increased sanctions pursuant to the Colin Foote Act a trial judge or magistrate must make specific findings of fact as to whether the motorist poses a substantial traffic safety hazard. See Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983) (“[t]he word ‘shall’ usually connotes the imperative and contemplates the imposition of a duty.”) (quoting Carpenter v. Smith, 79 R.I. 326, 334-35, 89 A.2d 168, 172-73 (1952)).

Here, the trial magistrate, in imposing sanctions pursuant to the Colin Foote Act, made the requisite findings of fact that the Appellant did pose a substantial traffic safety hazard. The trial magistrate stated that he found the Appellant to

“pose a potential hazard if he continues to operate a motor vehicle in the State of Rhode Island. Although, this specific incident may not have posed a hazard to himself or other motorists at that time, his record clearly indicates that he has flagrant disregard for the traffic laws of the State of Rhode Island.” (Tr. at 21-22.)

The trial magistrate also reviewed Appellant’s driving record, which included four previous moving violations within the requisite period. See Tr. at 21. Based upon those violations and the most recent charge, the trial magistrate found that Appellant was a safety hazard. See id. Appellant’s contention that the trial magistrate did not make specific findings as required by the Colin Foote Act is misplaced. The trial magistrate clearly made specific findings of fact by reviewing the Appellant’s driving record and finding, based upon his record, the Appellant posed a traffic safety hazard as a result of his flagrant disregard for the motor vehicle code. See Tr. at 21-22.

The instant matter can be distinguished from previous Appeals Panels decisions such as State v. Bottella, T11-075 (R.I. Traffic Trib., filed February 7, 2012). In Bottella, members of this Court remanded the matter to the trial judge because she failed to make the requisite findings of fact as required by the Colin Foote Act—the trial judge simply recited the motorist’s driving

record. Here, the trial magistrate did make such specific findings of fact. Not only did the trial magistrate recount the Appellant's driving record, but he specifically articulated that he was imposing increased sanctions based upon Appellant's driving record and that the Appellant posed a traffic safety hazard. Thus, this case is distinguished from Bottella.

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the trial magistrate's decision was supported by the reliable, probative, and substantial evidence of record. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation sustained.

ENTERED:

Judge Edward C. Parker (Chair)

Magistrate William T. Noonan

Magistrate Domenic A. DiSandro III

DATE: _____